



Maryland
Department of
the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor
Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

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Paul N. De Santis, Esquire
Chief of Legal and Regulatory Affairs
Baltimore City Department of Public Works
300 Abel Wolman Municipal Building
200 North Holliday Street, 6th Floor
Baltimore, MD 21202

Re: United States and State of Maryland v. Mayor and City Council of Baltimore
Civil Action No. JFM-02-1524

Dear Mr. De Santis:

The Maryland Department of the Environment (Department), Water and Science Administration, Compliance Program is in receipt of the City of Baltimore's (Baltimore) "Notice of Potential Delays Due to Covid-19 Pandemic and State of Emergency Declarations" dated March 23, 2020 (Baltimore's Notice). Baltimore's Notice informs the Department and the U.S. Environmental Protection Agency (EPA) of a *force majeure* event that may cause a delay in fulfilling certain projects under the Modified Consent Decree (MCD) in Civil Action No. JFM-02-1524.

Baltimore's Notice asserts a *force majeure* event based on the current COVID-19 pandemic and the State's emergency declarations. Baltimore's Notice explains that due to the COVID-19 pandemic, the State's emergency declarations, and concerns for the health of Baltimore's employees, contractors and the public, Baltimore may need to suspend ongoing work on the MCD Phase I projects, which could result in delays in complying with the MCD. Additionally, Baltimore states that it will continue to keep the Department and the EPA informed of any specific delays it encounters through the submission of supplementary letters that include specific details on a project-by-project basis.

Baltimore's Notice does not provide enough information to constitute a sufficient notice of *force majeure* event, as contemplated by paragraph 45 of the MCD, as to any specific obligation within the MCD. While the Department appreciates that Baltimore may not be able to predict all potential delays in this rapidly changing environment, the Department will not provide a broad waiver of MCD deadlines as a result of delays due to the COVID-19 pandemic. Instead, the Department will review Baltimore's *force majeure* notices requesting an extension of MCD deadlines on a case-by-case basis. For example, pursuant to paragraph 45 of the MCD, Baltimore is required to notify the Department and the EPA in writing within 30 days after Baltimore first becomes aware of *force majeure* events that affect specific Baltimore obligations, including but not limited to, projects and reporting, and their associated deadlines, in the MCD.

Paul N. DeSantis, Esquire

As specified in paragraph 45 of the MCD, for each of the MCD obligations that may be delayed, Baltimore is required to describe in detail the cause of the delay, the anticipated length of the delay, the precise causes of the delay, the measures taken or to be taken by Baltimore to prevent or minimize the delay, and a timetable by which those measures may be implemented.

Also pursuant to paragraph 45 of the MCD, Baltimore is required to adopt all reasonable measures to avoid or minimize any delays caused by a *force majeure* event. If there is a delay in fulfilling any obligation of the MCD that is foreseeable by Baltimore, the Department requires that Baltimore promptly report the foreseeable delay to the Department and provide the required information under paragraph 45 of the MCD.

The Department appreciates Baltimore's efforts to avoid missed deadlines or compliance requirements required under the MCD. In addition to compliance with the express provisions of the MCD, we believe that it will be productive for Baltimore to maintain an open and continuing dialogue with MDE, EPA and the U.S. Department of Justice (DOJ). This will serve to protect human health and the environment, minimize potential misunderstandings, and facilitate timely and appropriate decision-making as this situation unfolds. Please be advised that the EPA will send a separate letter responding to Baltimore's Notice. Thank you for your anticipated cooperation in this matter. If you should have any questions, please contact Sharon Talley at (410) 537-3510, or sharon.talley@maryland.gov.

Sincerely,



Lee Currey (May 19, 2020 09:40 EDT)

D. Lee Currey
Director
Water and Science Administration

DLC:set

cc: Chief, Environmental Enforcement Section, DOJ
Nina Rivera, Senior Assistant Regional Counsel, U.S. Environmental Protection Agency
Andrew Dinsmore, NPDES Enforcement Branch Chief, Water Protection Division
Ellen Cohill, Assistant Attorney General, OAG-MDE